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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD DANELLE DURDEN,

Defendant and Appellant.

E069298

(Super.Ct.No. RIF1701074)

OPINION

APPEAL from the Superior Court of Riverside County. Charles J. Koosed, Judge.

Affirmed with directions.

Ami Sheth Sagel, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Joseph C. Anagnos, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Richard Danelle Durden was charged by information with identity theft by a person previously convicted of identity theft (Pen. Code¹, § 530.5, subd. (c)(2), count 1), possession of a falsified identification card (§ 470b, count 2), and misdemeanor resisting an officer (§ 148, subd. (a)(1), count 3). The information further alleged that defendant suffered one prior prison term. (§ 667.5, subd. (b).) A jury found defendant guilty of counts 1 and 2. However, it was unable to reach a verdict on count 3, so a trial court declared a mistrial as to that count. Defendant admitted the prior conviction as to count 1 and the prison prior allegation. The court held a sentencing hearing and sentenced him to three years in county jail on count 1, three years in county jail on count 2, to be stayed pursuant to section 654, and one year consecutive on the prison prior. However, the court imposed a split sentence of two years in county jail and two years under mandatory supervision. Defendant then pled guilty to count 3, and the court ordered him to serve 33 days in county jail, which it determined was time served.

On appeal, defendant contends that the mandatory supervision condition requiring him to report any law enforcement contacts to his probation officer within 48 hours is unconstitutionally vague. We agree and remand the matter with directions to modify the condition. In all other respects, we affirm.

FACTUAL BACKGROUND

On May 7, 2015, defendant used a fraudulent driver's license in someone else's name to apply for a Costco membership and a credit card. Costco employees called the

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

police. As an officer arrived, defendant left Costco and headed to a nearby store. The officer ordered him to stop, but he started walking faster and entered the store. The officer chased him through the store until he ran into a display. At that time, the officer apprehended him.

ANALYSIS

The Condition of Mandatory Supervision Should Be Modified

One of the conditions of defendant's mandatory supervision requires him to "report any law enforcement contacts to the Probation Officer within 48 hours." Defendant argues that this condition is unconstitutionally vague, since it is unclear what type of contact would constitute a violation. This contention is well taken.

When a defendant is placed on mandatory supervision as part of a split sentence, the court may impose conditions of supervised release under standards similar to those imposed as conditions of probation. (§ 1170, subd. (h)(5)(A), (B).) We apply de novo review to evaluate constitutional challenges to probation conditions. (*People v. Appleton* (2016) 245 Cal.App.4th 717, 723.) To withstand a vagueness challenge, "a probation condition must be sufficiently definite to inform the probationer what conduct is required or prohibited, and to enable the court to determine whether the probationer has violated the condition." (*People v. Hall* (2017) 2 Cal.5th 494, 500 (*Hall*).)

We agree with defendant that the phrase "any law enforcement contacts" does not give him adequate notice of what he is supposed to report. The condition could include exchanging casual comments while standing in a line with a police officer or other

similar circumstances. We further note that the term “law enforcement” could be more clearly defined (i.e., does the condition include any personnel beyond police officers?).

The Third District Court of Appeal dealt with a similar mandatory supervision condition in *People v. Relkin* (2016) 6 Cal.App.5th 1188 (*Relkin*). In that case, the defendant was subject to a condition requiring him to “ ‘report to the probation officer . . . any arrests or any contacts with or incidents involving any peace officer.’ ” (*Id.* at p. 1196.) The court held the portion of the condition requiring that defendant report “ ‘any contacts with . . . any peace officer’ ” was vague and overbroad, since it “[did] indeed leave one to guess what sorts of events and interactions qualify as reportable.” (*Id.* at p. 1197.) Accordingly, the court remanded the case to the trial court with directions to modify the condition to more clearly inform the defendant of what contacts were required to be reported. (*Ibid.*)

The People here argue that defendant’s condition “can be reasonably and practically construed as not requiring the reporting of marginal or hypothetical contacts,” such as accidentally bumping into an officer while in line at Starbucks. The People in *Relkin* made a similar argument, and the court rejected it, stating that “[t]he language does not delineate between such occurrences and thus casts an excessively broad net over what would otherwise be activity not worthy of reporting.” (*Relkin, supra*, 6 Cal.App.5th at p. 1197.) We agree with the reasoning in *Relkin* and conclude that the language of the condition is not sufficiently clear.

We will remand the case to the trial court to appropriately modify the mandatory supervision condition at issue. (See *Relkin, supra*, 6 Cal.App.5th at p. 1197.)

DISPOSITION

We remand the matter to the trial court with regard to the mandatory supervision condition requiring defendant to “report any law enforcement contacts to the Probation Officer within 48 hours.” This condition should be modified to clearly inform defendant of what contacts must be reported. In all other respects, we affirm the judgment.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

RAPHAEL
J.